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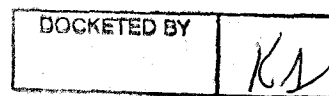
June 6, 2005

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Arizona Corporation Commission
1200 W. Washington
Phoenix, Arizona 85007

Arizona Corporation Commission

DOCKETED

JUN - 6 2005



RE: *Accipitier v. Cox Arizona Telecom et al.*
Docket No. T-03471A-05-0064

Dear Colleagues:

I have received Commission Staff's response to my letter regarding the role of the City of Peoria in this matter. To further illustrate my interest, I observe that on June 1, 2005 Qwest Communications filed an action in Federal District Court against the Utah Telecommunications Open Infrastructure Agency ("UTOPIA") alleging unfair competition under the 1996 Act.

While I have not yet seen the complaint in that case, I have attached an article from the *Deseret Morning News* that describes the joinder of the City of Riverton as a party defendant. Apparently Riverton is named in the complaint by virtue of supplying underground conduit to UTOPIA.

In addition to the other issues before the Commission, I would welcome the parties' discussion of the relevance, if any, of *Qwest v. UTOPIA, et al.*, and the Commission's notice of the pleadings filed in this case, especially in light of the defense raised that the arrangement among the Respondents was approved by the City of Peoria.

Very truly yours,

Marc Spitzer
Commissioner

Enclosure:

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deseretnews.com

Deseret Morning News, Thursday, June 02, 2005

Qwest is suing UTOPIA

Company says Utah agency sells services below market prices

By Doug Smeath

Deseret Morning News

Plans for a multicity telecommunications network have long drawn fire from competing communications companies. Now, one of them has taken the fight to court.

Qwest filed a federal lawsuit Wednesday afternoon against UTOPIA — the Utah Telecommunications Open Infrastructure Agency — accusing the agency of creating unfair competition that allows UTOPIA contractors to sell communications services at below market prices.

UTOPIA has been working to build and operate a network giving high-speed voice, video and data access to residents and businesses in member cities. Of the 14 member cities, 11 have pledged financial support through city bonds.

But Qwest's suit says the agency is taking advantage of its status as a governmental agency — which is exempt from sales and property taxes — to allow its contractors, including AT&T, to provide telecommunications services at below-market prices while Qwest has no such option.

"Qwest and other competitors in the industry are required by law to pay both kinds of taxes," Qwest regional spokesman Vince Hancock told the Deseret Morning News. "We've expressed concern all along about potential problems from discriminatory actions. Our original fears were indeed well-founded, and the suit was the last course of action available."

UTOPIA representatives could not be reached for comment after the Deseret Morning News obtained a copy of the lawsuit Wednesday afternoon.

The lawsuit also names Riverton, a member city that has not approved bond financing for the project, as a defendant. It accuses Riverton of violating the 1996 Federal Telecommunications Act by requiring developers to provide an underground conduit for the city to provide UTOPIA access for laying fiber-optic lines.

"The practice of securing a free conduit is an abuse of the city's regulatory authority and their unique governmental position," Hancock said.

Riverton city attorney David Church said Wednesday he had not seen the lawsuit and could not comment on its specifics. However, he emphasized that Riverton has not pledged financing to UTOPIA and he wondered why Riverton would be singled out.

"I'm just surprised Riverton would be the one" named in the suit, he said. "I'm sure other

member cities are doing the same thing."

He said he did not know the specifics of Riverton's ordinance requiring access to an underground conduit, but he said the city provides infrastructure access to all communications and utilities providers, including Qwest.

"How does Qwest think they get to these houses?" he said.

The lawsuit also accuses UTOPIA of attaching facilities to Qwest utility poles without permission and failing to follow safety standards, endangering Qwest service personnel and the general public.

Among the safety risks Qwest alleges are that UTOPIA has failed to meet minimum clearance standards for separation with existing power facilities, left poles in unsafe conditions that put Qwest technicians at risk and failed to protect poles' structural integrity, according to the lawsuit.

It also says UTOPIA has "negligently and repeatedly" cut Qwest cables during installations, resulting in service outages. The most recent example was a May outage in Murray that Qwest estimates could total \$400,000 worth in damages.

The lawsuit asks for a declaration that UTOPIA has been abusing its position as a governmental agency and that it can no longer use that position to its own advantage or the advantage of its contractors.

It seeks an injunction stopping UTOPIA from violating safety standards and from using Qwest-owned poles without negotiating an agreement. It also asks for an unspecified amount of damages for the use of Qwest poles and the outages caused by UTOPIA installations, as well as attorneys' fees.

Pledging member cities of UTOPIA are Brigham City, Centerville, Layton, Lindon, Midvale, Murray, Orem, Payson, Perry, Tremonton and West Valley City. Non-pledging members are Cedar City, Cedar Hills and Riverton.

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